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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5351/2003

Sau.Smita W/o Pramod Patil,
Age 39 years,Occu.Service,
R/o C/o Pramod B.Patil,
6/4,Amrut Apptt.Gajanan Hosg.Society,
Jalgaon,Dist.Jalgaon.

...Petitioner..

Versus

1] The State of Maharashtra,
Through Secretary,
Education Department,
Mantralaya, Mumbai-32.

2] North Maharashtra University,
Through its Registrar, Jalgaon,
Dist.Jalgaon.

3] The Grievance Committee,
North Maharashtra University,
Jalgaon.

4] The Vice Chancellor,
North Maharashtra University,
Jalgaon.

...Respondents...

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Shri A.G.Talhar, Advocate for Petitioner.

Ms.S.S.Raut, AGP for the State.

Shri A.B.Girase, Advocate h/f Shri R.B.Raghuwanshi,
Advocate for Respondent No.2.

Respondent Nos.3 to 14 served.

Shri S.R.Barlinge, Advocate for Respondent Nos.7,8,9 and
11.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 20.12.2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

1] Mr.Talhar, learned counsel for the petitioner submits that pursuant to the advertisement issued in the year 1991 for the post of Assistant, Laboratory Attendant, Peon, the petitioner is selected as an Assistant and was at Sr.No.29 of the wait list. Whereas the respondents were below the petitioner in the wait list as per the merit. The learned counsel submits that the seniority list maintained is against the rules and the Standard Code of the University. According to the learned counsel, as per Clause 14 of the Standard Code Rules, 1984, the seniority of the employee in cadre under the University shall be determined on the basis of the date of service in the cadre. If more than one employee is appointed by open competition, the seniority of the candidate selected at the same interview shall be in the order in which they are ranked by the selection committee irrespective of the dates of their joining or the dates of their confirmation. The learned counsel submits that

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the petitioner was ranked at Sr.No.29 and all the respondents were ranked below the petitioner. As such, the petitioner has to be considered senior to all the respondents. The impugned order does not refer to the said aspect. According to the learned counsel, grave error has been committed. Even the record is not properly maintained by the University.

2] Mr.Girase, learned counsel for the University submits that in the year 1991, the advertisement was issued to prepare the wait list of various posts as the posts were not sanctioned. As and when the posts were sanctioned, effective orders were passed of appointing those persons on probation. Till that time, these persons were working on temporary / contract basis. According to the learned counsel, as and when vacancy arose and the posts were sanctioned, the eligible candidates were taken on probation. The University has given the details of the same in the affidavit filed. No illegality has been committed. The order passed by the authority is explicitly clear.

3] Mr.S.R. Barlinge, learned counsel for the respondent nos.7,8,9 and 11 submits that these respondents were also

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appointed as Assistants and their names appeared in the list of Assistants. They were confirmed in service and some of them are subsequently promoted as Senior Assistants. The learned counsel submits that the criteria for promotion to Senior Assistant post is seniority-cum-merit. The petitioner herein was terminated in the year 2009. The appeal was allowed by the College Tribunal, however, with a rider that as a punishment, four increments of the petitioner were stopped. The learned counsel submits that the authority has rightly relied upon Sub-rule (2) of Rule 3.

4] We have considered the submissions canvassed by the learned counsel for the parties.

5] There is no dispute of the fact that the petitioner and the respondents herein were all selected as Assistants pursuant to the selection process conducted vide advertisement of the year 1991. The University has filed affidavit stating that on the date when advertisement was issued, the posts were not sanctioned and the posts of Assistants were sanctioned phase-wise. Vide Government resolution dated 8.7.1991, 6 posts of Assistant were sanctioned. Thereafter, vide Government

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resolution dated 31.10.1991, 31 posts of Assistant were sanctioned. Under the Government resolution dated 2.11.1993, 16 posts of Assistant were sanctioned and under the Government resolution dated 9.12.1994, 30 posts of Assistant were sanctioned i.e. Total 76 posts of Assistant are sanctioned phase-wise. The recruitment, seniority, promotion of the candidates is governed by the Standard Code Rules, 1984. Rule 14 of the said Rules is relevant and the same reads as under:-

14. Seniority :

1] The seniority of the employee in a cadre under the University or the College under same Management shall be determined on the basis of date of continuous service in that cadre. The date of joining the service on probation or as the case may be the date of promotion shall be taken as the date of continuous service for this purpose. The service rendered by an employee in other recognised institution or affiliated college under the same management whether aided or unaided or in the office of the management shall be treated as foreign service and the same shall be counted for seniority.

2] The employee confirmed in a permanent post shall rank higher to that appointed in

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officiating capacity. The seniority of the employee confirmed in a cadre shall be determined on the basis of the date of confirmation in that cadre.

3] If more than one employee is appointed by open competition or on recommendation of the Selection Committee and if they complete their probation within normal uniform probationary period, the seniority of the candidates selected at the same interview shall be in the order in which they are ranked by the Selection Committee, irrespective of the dates of the joining the duties or the dates of their confirmation:

Provided that, in case the probationary period of the employee appointed on probation is extended beyond the normal period of probation and his date of confirmation having been postponed to any subsequent date his seniority shall be determined with reference to the date from which he completes his probationary period.

4] The employees promoted to a post in higher cadre shall rank below those employees in that cadre on the date of his promotion irrespective of their *interse*-seniority in the lower cadre. The employee promoted to a post in higher cadre earlier shall be considered senior to the employee promoted to that cadre at a later date irrespective of their respective seniority in

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the lower cadre or the pay drawn.

Explanation: If the promotion of junior employee to the post in higher grade is ordered temporarily because the senior employee is not immediately available for taking the charge of the post in a higher cadre either on medical grounds or on other personal grounds he shall not lose his original seniority."

6] Reading the said Rules, it is explicitly clear that if more than one employee is appointed by open competition or on recommendation of the selection committee and if they complete the probation within normal uniform probationary period, the seniority of the candidate selected at the same interview shall be in the order in which they are ranked by the selection committee irrespective of the dates of their joining or the dates of their confirmation. The petitioner herein was appointed on 8.6.1993 for the first time and joined the duties on 11.6.1993. The date of appointment as 8.6.1993 as Assistant was on direct appointment basis. However, pursuant to the said advertisement of the year 1991, the petitioner was appointed on probation on 3/4-1-1995.

7] It is not disputed that the petitioner and the respondents belong to OBC category and in the list

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maintained by the University the petitioner was at Sr.No.29 and above the respondents of the present petition. Naturally, when the sanctioned posts for OBC candidates became available, the petitioner is required to be considered prior to the respondents for the said post and the seniority will have to be maintained considering the said aspect.

8] The present petition is restricted to the extent of maintaining the seniority list. As observed above, in the wait list, the petitioner was above the present respondents and so naturally the date of appointment of the petitioner on probation ought to be prior to the respondents. We are observing this more particularly in view of the fact that save and except the selection process pursuant to the advertisement of 1991, there was no other selection process pursuant to which the petitioner and the respondents were appointed as Assistants. The University is required to follow the said course.

9] In the result, we pass the following order.

O R D E R

i] The seniority of the petitioner shall be

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considered for the post of Assistant from OBC category considering her rank at Sr.No.29 in the wait list and the same would be above the present respondents.

ii] In the present petition, we are not disturbing the position as existing today as far as promotion to the post of Senior Assistant is concerned. The criteria is seniority-cum-merit, which the departmental promotion committee or such other authority under the statute is required to consider by applying the applicable norms.

iii] Writ petition is accordingly disposed of. Rule is accordingly disposed of. No costs.

iv] The petitioner may move the authorities with regard to the seniority in view of the aforesaid observations and for any such other claim as may be permissible in law.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)